

2018 IGMCM TTT

DAY 3 SCHEDULE



- ☐ Legal Sufficiency: The Role of Counsel & SJA
- ☐ Military Whistleblower Retaliation
- ☐ Ethics & Standards of Conduct
- ☐ IG Process (Part III)
- ☐ Military Whistleblower Retaliation (Prac-App)
- ☐ Test



INSPECTOR GENERAL

United States Marine Corps



★ HONOR ★ COURAGE ★ COMMITMENT ★

PRESENTED BY: *DANIELLE P. BIANCHI*, COUNSEL FOR THE INSPECTOR GENERAL OF THE MARINE CORPS

LEGAL SUFFICIENCY AND THE ROLE OF SJA/COUNSEL

ENABLING LEARNING OBJECTIVES

1. Identify which attorneys support based on investigation subject matter.
2. Review the elements of an LSR.
3. Review the rest of the endorsement process after the LSR.
4. Discuss legal support and particulars of release of IG records.



Authorities

- DoDI 7050.1: Defense Hotline Program
- SECNAVINST 5430.57G: Mission and Functions of the Naval Inspector General
- SECNAVINST 5370.5B: DON Hotline Program
- MCO 5430.1: Marine Corps Inspector General Program (HQMC compliance phase)
- MCO 5370.8: Marine Corps Hotline Program

NOTE: Secretarial authority governs IG products, not JAGMAN authorities.



AUTHORITIES (CONT.)

- Per MCO 5370.8, CIGs are an alternative to the chain of command, an extension of the IGMG who reports directly to SECNAV.
 - Secretarial authority
 - IG products must be complete
 - *No latitude to leave anything unaddressed*
 - *Avoids unnecessary/unreasonable risk to command element*
- DoDI, SECNAVINST, and MCO detail requirements for proficient and independent command hotline program
 - Receives/addresses **all** complaints
 - IGs have unfettered access to documents and personnel (SECNAVINST 5430.57G & MCO 5430.1)



IG RELATIONSHIPS – WITH THE LAWYER (SJA/CL)

- Counsel/SJA support to CIGs:
 - Early legal engagement is critical:
 - *Legal counsel and legal sufficiency of IG products must be provided by an attorney authorized to practice in the applicable area of law, as delineated in SECNAVINSTs 5430.7R, 5430.25E, and 5430.27D.*
 - *Authorities, investigative plan, scoping foreseeable command actions in one product, and frame/approve allegations.*
 - *Whether something can be taken to courts-martial is not the barometer for IG allegations.*
 - Provide Legal Concurrence on ALL IG Inquiries that do not result in IG-formulated allegations and an investigation
 - Provide Legal Sufficiency Review (LSR) on ALL IG investigations
 - HCR required for any case DoD IG referred for info IF resulted in a substantiation (DoDI 7050.01—Oct 2017)
 - Assist with document release for official use
- CL supports IGMC



Authorized areas of legal practice in DON

SJA Practice Areas

- Military Justice
- Civil and Administrative Law
- Operational Law
- Legal Assistance
- Ethics Counselor*

* Shared Responsibility

Ref: SECNAVINST 5430.27D

Counsel Practice Areas

- Acquisition Law
- Business and Commercial Law
- Civilian Personnel and Labor Law
- Ethics Counselor*
- Environmental Law
- Fiscal Law
- FOIA and PA
- Intellectual Property Law
- Intelligence and National Security Law
- Law pertaining to Cyberspace
- Real and Personal Property Law

- Litigation related to the above

Ref: SECNAVINST 5430.7R and
SECNAVINST 5430.25E



LEGAL SUFFICIENCY ANALYSIS - CHECKLIST

- ✓ Properly framed allegations using language of the standard
- ✓ Logical & complete findings of fact, proper analysis applying standard (and its elements) to facts, and conclusion supported by facts and analysis
- ✓ Each allegation has its own analysis (1 standard/allegation)
- ✓ To be substantiated, an allegation must be legally sufficient by a **preponderance of the evidence**
 - ✓ *“No legal objection” does NOT mean legally sufficient*
- ✓ Legal Sufficiency Review cannot “amend” the HCR nor contain disposition advice
 - ✓ *Long Legal Sufficiency Review is a red flag that there are problems with HCR*
- ✓ If not legally sufficient, return to IG for improvements



HOTLINE COMPLETION REPORT – ENDORSEMENT

- CIGs must review ALL HCRs prior to the Command endorsement.
- Directing Authority
 - Must sign and state concurrence or non-concurrence
 - May direct additional action
 - If non-concur, contact IGMCMC and if still non-concur
 - *Directing Authority must write addendum*
 - *Must clearly explain rationale*
 - *Maintained with original HCR*



RECORDS RELEASE

■ Release of IG records

- IG Act, DoDI 7050.01 (Oct 2017) and confidentiality:
 - *“All hotline personnel have a duty to protect from unauthorized disclosure the personal identity of and information provided by individuals participating in a hotline process. Hotline personnel have a duty to maintain confidentiality as they execute DoD Hotline duties and responsibilities.”*
 - Exceptions listed in Paragraph 4.2: consent, emergency, or otherwise unavoidable disclosure, or disclosing to another IG Act covered entity who has a duty to maintain confidentiality.
- PA and FOIA: redactions → Appropriately cited authority **critical** FOIA implications
- Official request–relevance?
 - *Articulate official purpose in release document*
 - *Adverse actions and level of redaction*
 - *Not full and unrestricted access*

■ Release Authority

- Directing Authority



QUESTIONS?



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PRESENTED BY: *DANIELLE P. BIANCHI*, COUNSEL FOR THE INSPECTOR GENERAL OF THE MARINE CORPS

MILITARY WHISTLEBLOWER RETALIATION

ENABLING LEARNING OBJECTIVES

1. Identify potential retaliation issues.
2. Understand fundamental concepts.
3. Provide framework for asking appropriate questions.
4. Know who to contact for support.





HOT BUTTON ISSUE: RETALIATORY BEHAVIOR

- **10 U.S.C. §1034 (implemented by DoDD 7050.06):**
 - Defines restriction, reprisal, and Service Secretary oversight of Commander's actions.
 - 2017 Amendments: added 2 new personnel actions (PAs) and Secretary action to prevent "immediate hardship" to complainant.
- **Military Whistleblower Protections - 10 U.S.C. § 1034**
 - ***Restriction:*** No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.
 - ***Reprisal:*** No person may take (or threaten to take) an unfavorable or withhold (or threatening to withhold) a favorable personnel action, as reprisal against a member of the armed forces for making or preparing to make, or being perceived as making or preparing to make a protected communication (PC).



HOT BUTTON ISSUE: RETALIATORY BEHAVIOR (cont.)

- IGMC investigates:
 - Military members (Title 10)
 - All reprisal and restriction allegations and
 - Any other retaliation allegation that is IG appropriate.
- Article 132—Retaliation (*NEW NDAA FY17, effective 23 Dec 16):
 - Taking/withholding a personnel action (PA) with intent to:
 - Retaliate for reporting/planning to report criminal offense, or making/planning to make protected communication (PC), or
 - To discourage reporting a criminal offense or making a PC.
- Article 93—Maltreatment
- *NEW SECDEF Definitions (11 Jan 17):
 - Pursuant to DoD Retaliation Prevention and Response Strategy and Implementation Plan
 - Military Depts. have 120 days to implement punitive regulations
 - **Ostracism**
- SECNAVINST 5370.7D:
 - Punitive language (via Art. 92): restriction, reprisal, and ostracism (to be updated)



HOT BUTTON ISSUE: RETALIATORY BEHAVIOR (cont.)

- **Maltreatment:** Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.
- **Ostracism:** With a *nexus* to military service:
 - Wrongfully *excluding* a military member from social acceptance or membership in, or association with, a group (of which such military member was a part or a *reasonable person* would conclude wanted to be a part)
 - With the *intent* to do any of the following:
 - Inflict emotional distress on the member (“emotional distress” means a highly unpleasant mental reaction, such as anguish, grief, fright, humiliation, or fury);
 - Discourage reporting of a criminal offense or sexual harassment (CO/SH); or
 - Otherwise discourage due administration of justice concerning a CO/SH.
 - **AND** because the perpetrator knew/believed that the member had/intended to report CO/SH; was/believed to be a victim of CO/SH; intervened to prevent/attempted to prevent CO/SH; or cooperated/will cooperate in an investigation or other criminal, disciplinary, or administrative proceeding (as a witness or otherwise) involving CO/SH.



CIVILIAN REPRISAL

- Appropriated Fund Employees
 - Title 5, USC 2302 (b)(8)
 - Refer to Office of Special Counsel (OSC) (800-872-9855) / <https://osc.gov/pages/file-complaint.aspx>
- Non-Appropriated Fund Employees
 - DoDD 1401.03
 - Refer to DODIG Hotline (1-800-424-9098) / www.dodig.mil/hotline/reprisalcomplaint.html
- DoD Contractors
 - Title 10, USC 2409
 - Refer to DoDIG Hotline (1-800-424-9098)
 - www.dodig.mil/hotline/reprisalcomplaint.html
- Intelligence Community (Civ & Mil)
 - Refer to DODIG Hotline (1-800-424-9098)
 - <http://www.dodig.mil/hotline/classifiedcomplaint.html>
- Local / Foreign Nationals
 - Status of Forces Agreement (SOFA)



How Reprisal Affects Commanders

- Before/during reprisal investigation:
 - Reprisal allegations do not “freeze” command action, however, protect the record by documenting:
 - *More likely than not action would have been taken despite the protected communication because...*
 - *All similarly situated individuals face same action.*
 - *Investigative/disposition determinations/consultations regarding collateral misconduct, unrelated to the PC.*
- ASN (M&RA) checks the Commander’s “math”:
 - “Appropriate” disciplinary/administrative action taken against the subject and
 - Correct record of complainant.



TIMELINESS



- Service IGs may dismiss complaints based on timeliness
 - Complainants have one year from when they learn of the personnel action to file a complaint
- IGMC may consider cases that exceed the time if
 - Compelling reasons for delay exist
 - Strength of evidence is overwhelming
- **NO LIMIT FOR RESTRICTION COMPLAINTS**



RETALIATION (REPRISAL)– ELEMENTS

- Protected Communication (PC)
- Personnel Action (PA)
- Responsible Management Official (RMO) knowledge of the PC
- Linkage between the PC and the PA



PROTECTED COMMUNICATION (TO WHOM)

IF

- A lawful communication was made to an IG or a Member of Congress

THEN

- That communication is ALWAYS protected, regardless of content



PROTECTED COMMUNICATION (TO WHOM)

IF

The communication was made to:

- DoD audit, inspection, investigation, or law enforcement organization
- A court-martial proceeding
- The communication was testimony or was made when participating in/assisting an investigation/proceeding related to a PC, or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section (10 USC 1034)
- Any person or organization in the chain of command; or
- Any other person or organization designated pursuant to regulations or other established administrative procedures to receive PCs



PROTECTED COMMUNICATION (ABOUT)

AND

- Any communication that the member reasonably believes evidences:
 - A violation of law or regulation (including rape, sexual assault, other sexual misconduct, sexual harassment, or unlawful discrimination)
 - Gross mismanagement or gross waste of funds
 - An abuse of authority
 - A substantial and specific danger to public health or safety; or
 - A threat by another member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property

THEN

- That communication is ALWAYS protected



PROTECTED COMMUNICATIONS...

Will not be excluded because...

- The communication was made to one or more of the alleged wrongdoers
- The information had already been revealed
- Of the member's motive in making the communication
- The communication was not made in writing
- The member made the communication while off duty
- The communication was made during the normal course of duties



PERSONNEL ACTION

Any action taken on a member of the armed forces that affects, or has the potential to affect, that military member's current position or career (DoDD 7050.06, definitions)

Personnel actions include

- Denial / delay of promotions
- Disciplinary or other corrective action
- Fitness Reports / Performance Evaluations
- Transfer or reassignment (or denial of)
- Decisions affecting pay, benefits, awards, training, or TAD
- Relief or removals
- Separations or discharges
- Referrals for mental health evaluations (non process)
- Significant change (or threat) in duties inconsistent w/ the members grade
- Revocation/Suspension of access to classified material, authorization to carry a weapon, flying status, special certifications
- NEW: Failure of a superior to respond to retaliatory action or harassment
- NEW: Retaliatory Investigation



RESPONSIBLE MANAGEMENT OFFICIAL KNOWLEDGE

Responsible Management Official (RMO)

- Influenced or recommended the action be taken
- Made the decision to take the action
- Approved, reviewed, or endorsed the action

Knowledge

- Personally receiving the protected communication
- Hearing rumors about the protected communication
- Suspicion or belief that the complainant may have made a protected communication
- If there is any doubt or uncertainty whether the RMO knew about the PC -- give the complainant the benefit of the doubt and presume knowledge.



RETALIATION (REPRISAL) – LINKAGE

Does the evidence establish that the personnel action would have been taken, withheld, or threatened if the protected communication had not been made?

- Consider five variables
 - *Reason*
 - *Timing between the PC and personnel action*
 - *Motivation*
 - *Animus*
 - *Disparate Treatment*
- IGMC will determine



MILITARY WHISTLEBLOWER REPRISAL – SCENARIO

A Marine while deployed with a small team in an austere environment, became aware that the NCOIC and commander were taking control of all of the unit's MREs and auctioning off the most popular ones to the team, pocketing the money for their own gain. She advised the NCOIC that if they did not stop, she would report them to the IG. The Marine said that the NCOIC informed the commander of this and the commander forbade her use of the unit's communication devices, cutting her off from communications with anyone outside the unit. She was given a 6105 for insubordination to the NCOIC. When she returned from deployment (85 days after the alleged incident), she immediately filed a complaint with the IG alleging the misdeeds by the NCOIC and commander. Later, she filed an additional complaint with the IG alleging she was denied a deployment medal because she had filed the IG complaint. Everyone else in the unit received a deployment medal.



MILITARY WHISTLEBLOWER REPRISAL – SCENARIO #1

What are the PCs?:

A Marine while deployed with a small team in an austere environment, became aware that the NCOIC and commander were taking control of all of the unit's MREs and auctioning off the most popular ones to the team, pocketing the money for their own gain. She advised the NCOIC that if they did not stop, she would report them to the IG. The Marine said that the NCOIC informed the commander of this and the commander forbade her use of the unit's communication devices, cutting her off from communications with anyone outside the unit. She was given a 6105 for insubordination to the NCOIC. When she returned from deployment (85 days after the alleged incident), she immediately filed a complaint with the IG alleging the misdeeds by the NCOIC and commander. Later, she filed an additional complaint with the IG alleging she was denied a deployment medal because she had filed the IG complaint. Everyone else in the unit received a deployment medal.



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MILITARY WHISTLEBLOWER REPRISAL – SCENARIO #2

What are the PAs?:

A Marine while deployed with a small team in an austere environment, became aware that the NCOIC and commander were taking control of all of the unit's MREs and auctioning off the most popular ones to the team, pocketing the money for their own gain. She advised the NCOIC that if they did not stop, she would report them to the IG. The Marine said that the NCOIC informed the commander of this and the commander forbade her use of the unit's communication devices, cutting her off from communications with anyone outside the unit. She was given a 6105 for insubordination to the NCOIC. When she returned from deployment (85 days after the alleged incident), she immediately filed a complaint with the IG alleging the misdeeds by the NCOIC and commander. Later, she filed an additional complaint with the IG alleging she was denied a deployment medal because she had filed the IG complaint. Everyone else in the unit received a deployment medal.



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MILITARY WHISTLEBLOWER REPRISAL – SCENARIO #3

Who are the RMOs?:

A Marine while deployed with a small team in an austere environment, became aware that the NCOIC and commander were taking control of all of the unit's MREs and auctioning off the most popular ones to the team, pocketing the money for their own gain. She advised the NCOIC that if they did not stop, she would report them to the IG. The Marine said that the NCOIC informed the commander of this and the commander forbade her use of the unit's communication devices, cutting her off from communications with anyone outside the unit. She was given a 6105 for insubordination to the NCOIC. When she returned from deployment (85 days after the alleged incident), she immediately filed a complaint with the IG alleging the misdeeds by the NCOIC and commander. Later, she filed an additional complaint with the IG alleging she was denied a deployment medal because she had filed the IG complaint. Everyone else in the unit received a deployment medal.



MILITARY WHISTLEBLOWER REPRISAL – SCENARIO #3

Who are the RMOs?:

A Marine while deployed with a small team in an austere environment, became aware that the **NCOIC** and **commander** were taking control of all of the unit's MREs and auctioning off the most popular ones to the team, pocketing the money for their own gain. She advised the NCOIC that if they did not stop, she would report them to the IG. The Marine said that the NCOIC informed the commander of this and the commander forbade her use of the unit's communication devices, cutting her off from communications with anyone outside the unit. She was given a 6105 for insubordination to the NCOIC. When she returned from deployment (85 days after the alleged incident), she immediately filed a complaint with the IG alleging the misdeeds by the NCOIC and commander. Later, she filed an additional complaint with the IG alleging she was denied a deployment medal because she had filed the IG complaint. Everyone else in the unit received a deployment medal.



QUESTIONS?



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ETHICS & STANDARDS OF CONDUCT

ENABLING LEARNING OBJECTIVES

1. General Principles
2. Standards of Conduct & DoD Supplemental
3. Use of Government Resources
4. Gifts* New (effective 1 Jan 17)
5. Solicitation
6. Informal Funds/Messes
7. Fundraising
8. Social Media
9. Post-Government Employment* New NDAA Sec. 1045 (effective 12 Dec 17)
10. Political Activity
11. Conflicts of Interest



AGENDA

- General Principles
- Standards of Conduct & DoD Supplemental
- Use of Government Resources
- Gifts* New (effective 1 Jan 17)
- Solicitation
- Informal Funds/Messes
- Fundraising
- Social Media
- Post-Government Employment* New NDAA Sec. 1045 (effective 12 Dec 17)
- Political Activity
- Conflicts of Interest



WHO TO CALL...

- If you have an ethics concern or question:
 - **Designated Agency Ethics Counselors: CL/SJA**
- Ethics communications are not protected by the A/C Privilege and agency ethics officials are required to report violations of criminal code (Title 18).
 - *§2635.107: Good faith reliance upon the advice of an agency ethics official (provided all circumstances disclosed) will prevent disciplinary actions for violations. It will NOT prevent prosecution for violating a criminal statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution.*
- IG Hotline
- Ethics and SOC are complex: asking an attorney **before** something is a problem gives the attorney the time to provide the risk analysis.



KEY ETHICS REFERENCES

- Office of Government Ethics, 5 C.F.R. §2635 - Standards of Ethical Conduct for Employees of the Executive Branch
- DoD 5500.07-R, Joint Ethics Regulation (JER)
- 5 C.F.R. §3601 - Supplemental Standards of Ethical Conduct for Employees of the Department of Defense
- Title 18, United States Code
- JER, 3-211: Logistical Support of Non-Federal Entity (NFE) Events



GENERAL PRINCIPLES OF PUBLIC SERVICE §2635.101

- 1) Public Service is a Public Trust.**
- 2) No financial interests that conflict with the conscientious performance of duty.
- 3) No financial transactions using nonpublic Government information.
- 4) No gift solicitation or acceptance from any person or entity seeking official action.
- 5) Honest effort in the performance of duties.**
- 6) No unauthorized commitments/promises of any kind purporting to bind the Government.
- 7) No use of public office for private gain.**



GENERAL PRINCIPLES OF PUBLIC SERVICE (CONT.)

- 8) Act impartially: no preferential treatment to any private organization or individual.
- 9) Protect and preserve Federal property, using for only authorized activities.
- 10) No outside employment that conflicts with official Government duties and responsibilities.
- 11) Disclose fraud, waste, abuse, and corruption.
- 12) Satisfy obligations as citizen (i.e., taxes).
- 13) Provide equal opportunities for all Americans.
- 14) Avoid any actions creating the appearance of an ethical violation (reasonable person standard).**



5 CFR §2635

- Standards of Ethical Conduct for Employees of the Executive Branch
 - Subpart A – General Provisions
 - Subpart B – Gifts from Outside Sources* NEW Provisions
 - Subpart C – Gifts Between Employees
 - Subpart D – Conflicting Financial Interests
 - Subpart E – Impartiality
 - Subpart F – Seeking Other Employment
 - Subpart G – Misuse of Position
 - Subpart H – Outside Activities



5 CFR §3601

- Supplemental Standards of Ethical Conduct for Employees of the Department of Defense
 - Additional limitations on gifts between DoD employees for special infrequent occasions:
 - Group gift maximum -- \$300
 - Voluntary contribution cap -- \$10
 - Aggregate donation amounts from donating groups if subordinate part of both groups
 - Prior approval for outside employment and business activities with prohibited sources (applies to 450 & 278 filers)
 - Disclaimer for speeches and writings devoted to agency matters



USE OF GOVERNMENT RESOURCES

- **§2635.704:** Personal use of Government property--minimal
- Areas subject to abuse:
 - General office materials
 - General office equipment
 - Subordinate employee time
 - Official Government transportation
- **§2635.705: Misuse of Position:** An employer shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized by other law or regulation.
- **Voluntary Services:** Appropriate Compensation—FMV of service



GIFT ANALYSIS

- **§2635.302:** An employee shall not directly or indirectly solicit or accept a gift.
- Is it from a prohibited source?
- Is it offered because of your official position?
- Is it a “gift”?
 - Exclusions **§2635.203:**
 - *Modest items of food (no alcohol);*
 - *Items of little intrinsic value (cards, plaques) intended primarily for presentation (old rule: “solely,” but still of little intrinsic value);*
 - *Free attendance at an event where an employee is presenting information on behalf of agency (but only on day of speech)*
- Is there an exception?
 - Gifts up to \$20, up to \$50/year; based on personal relationships/outside employment*
 - **Informational Materials:** up to \$100 in a calendar year, unlimited with agency designee finding
- Is there a limitation on the exception?
- Is there an appearance problem? Frequency?



GIFT ANALYSIS (CONT.)

- **§2635.201(b): Considerations for declining otherwise permissible gifts**
 - Values-based decision-making—increase public trust
 - *Employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift.*
 - Consider: value, timing, donor, does the gift afford disproportionate access to the donor?
 - Even if all factors above are present, if a gift **exception** applies, there is no violation of the Standards of Conduct.
 - Does not subject an employee to disciplinary action.



GIFTS—SPECIAL

- **Gifts to Supervisors:**

- Generally no
- Exception: Infrequent, special occasions (wedding, illness, birth of child, or occasion that terminates the superior/subordinate relationship)—not promotion:
 - *Never cash—“appropriate to the occasion”*
 - *MUST be voluntary*
 - *\$10 per person*
 - *Aggregate gifts up to \$300*
- Exception: Hospitality and host/hostess gifts, occasional basis items <\$10

- **Gifts from Supervisors:**

- No \$ limit but generally discouraged to ensure equity among subordinates.



GIFTS—SPECIAL (CONT.)

- **Gift Cards:** \$20 *de minimis* exception (doesn't apply to gifts of cash)
 - General-use prepaid cards: NO regardless of value
 - Store cards: YES under \$20
 - Mall or online marketplace cards: YES under \$20
 - Cards cobranded with logo of merchant and payment network (i.e., Visa): NO regardless of value

- **Foreign Gifts:**
 - May accept gift of “minimal value” (retail value in US at time of acceptance of **\$390*** or less)—prior written determination now required per ALNAV 077/14
 - Must aggregate gifts (including gifts to spouse)
 - Diplomatically refuse, accept as gift to US, pay FMV



SOLICITATION

- **§2635.302:** A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to family members of such personnel, on or off duty.
- From junior to senior: no rule but discouraged
- Base Orders on door-to-door solicitation

- **NO!!!:** Girl Scout Cookies, Mary Kay, School fundraisers, etc.
 - CFC and Navy-Marine Corps Relief are authorized
 - By/For/Among: OK (doesn't include contractors)



INFORMAL FUNDS AND MESSES

- **MCO 5760.4C:** soda/coffee messes or plaque funds can be operated as “informal funds,” but they are NOT “unit funds”—no gov \$ in fund.
- The money in the fund belongs to the members of the fund in their *personal* capacities (VOLUNTARY membership).
- You can establish a coffee/soda mess to generate money for an informal fund, but can only sell soda, coffee, and other non-alcoholic beverages--NO FOOD OR OTHER ITEMS.
- An informal fund that generates more than \$350 per month or has more than \$1000 in the fund must have written authorization from the installation commander to operate aboard the installation.



FUNDRAISING EVENTS

§2635.808

- **No active and visible participation in event:** do not sit at head table, be the honorary chairperson, stand in receiving line, etc.
- **Appearance:** avoid the VIP dinner before the event because pictures taken can look like selling access to the GO/gov't official.
- **SECDEF (Gates) Model:** spoke at a dinner only and then left without eating.
- **Personal Capacity Disclaimers:** at the beginning and end of the speech (or the blog entry, article, etc.) so it is clear that you are acting in your personal capacity.
- **DoD title:** should not be given in a biography unless listed with at least three other facts so it is not the primary fact highlighted.



SOCIAL MEDIA

- OGE Legal Advisory 15-03 April 9, 2015:
 - 5 C.F.R. §2635.705: Use official time in an honest effort to perform official duties. This limits the extent to which employees may access and use their personal social media while on duty.
- Adopts a totality of the circumstances test when using official title in social media:
 - Would a reasonable person with knowledge of the relevant facts conclude that the government sanctions or endorses the communication?
- Liking or endorsing someone else is not necessarily a prohibited endorsement (if in personal capacity).
- Posting a resume is not seeking employment.
- Unsolicited offers of employment is not seeking unless responded to.
- Fundraising – OK, but don't respond to/target prohibited sources or subordinates.



POST-GOVERNMENT EMPLOYMENT

41 U.S.C. § 423, 5 C.F.R. § 2635.602

- Lifetime prohibition in matters in which participated personally and substantially
- Two-year restriction in matters pending under official responsibility
- One-year “cooling off” period for senior employees
- Procurement Integrity Act: special reporting rules for procurement officials
- **NDAA FY18, Section 1045**: restricts “lobbying activities” with respect to DoD matters by certain senior civilian officials and officers. Departing flag and general officers and senior civilian equivalents are prohibited from lobbying the Department or certain other executive branch officials regarding DoD matters for a one or two year period after departure, depending on seniority.



POLITICAL ACTIVITIES

- **DoD Directive 1344.10 –lawful general order:** “Political Activities by Members of the Armed Forces”—should not engage in partisan politics.
- **DoD Instruction 1334.01:** Cannot wear the uniform to political events.
- **Hatch Act:** Restricts partisan political activities of **civilian** DoD employees.
 - DoD policy further restricts the partisan political activities of certain political appointees and SES.
 - Office of Special Counsel (OSC) website resources
- **Partisan:** Any activity associated with the success of a political party, candidate for partisan political office, or partisan political group (includes fundraising via social media).
- *DoD SOCO and DoD PAG elections guidance*



POLITICAL ACTIVITIES: (CONT.)

- **Common Themes for military and civilians**
- Employees and military members can **never**:
 - Engage in partisan political activity at work.
 - Solicit or coerce votes, or other political activity, from a subordinate.
 - Use government equipment, including email, for partisan political purposes.
 - Use government time for partisan political purposes.
 - Solicit or accept a campaign contribution.
 - Use their government title in connection with partisan political purposes.
- Employees and military members **may**:
 - Vote for the candidate of their choice.
 - Express political views outside of the workplace (note however that commissioned officers may not use contemptuous words prohibited by 10 U.S.C. 888 against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty).



POLITICAL ACTIVITIES: (CONT.)

- **DoD Directive 1344.10, Section 4.3.1:**
 - Members not on active duty who are nominees or candidates for civil office in US Gov or State or other non-US Gov offices, may, in campaign literature (includes Web sites, and TV media):
 - Use or mention, or permit use/mention of military rank and service affiliation **BUT** they must **CLEARLY** indicate their retired/reserve status.
 - Military information and photographs **MUST** be accompanied by a **PROMINENT** disclaimer that neither imply endorsement by DoD or military service.
 - **Photographs:** cannot be the **PRIMARY** graphic representation in campaign literature, Web sites, or other media.



CONFLICTS OF INTEREST (COI)

- **§2635.402 Financial Interests:** An employee may not participate personally and substantially as a Government officer or employee in any particular matter in which he, his spouse, or minor child has a financial interest.
 - Resolving a COI or potential COI:
 - PRIOR disqualification from participating in the matter
 - Provide written notice to all parties
 - Divestiture of assets
- **§2635.502 Personal/Business Relationships:** Employee should not participate in a matter in which:
 - A person with whom he has a covered relationship is or represents a party to such matter, and
 - Where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter



QUESTIONS?



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INSPECTOR GENERAL

United States Marine Corps



★ HONOR ★ COURAGE ★ COMMITMENT ★

PRESENTED BY: 1STLT SAMUEL KILLEN, HOTLINE INVESTIGATOR, A&I

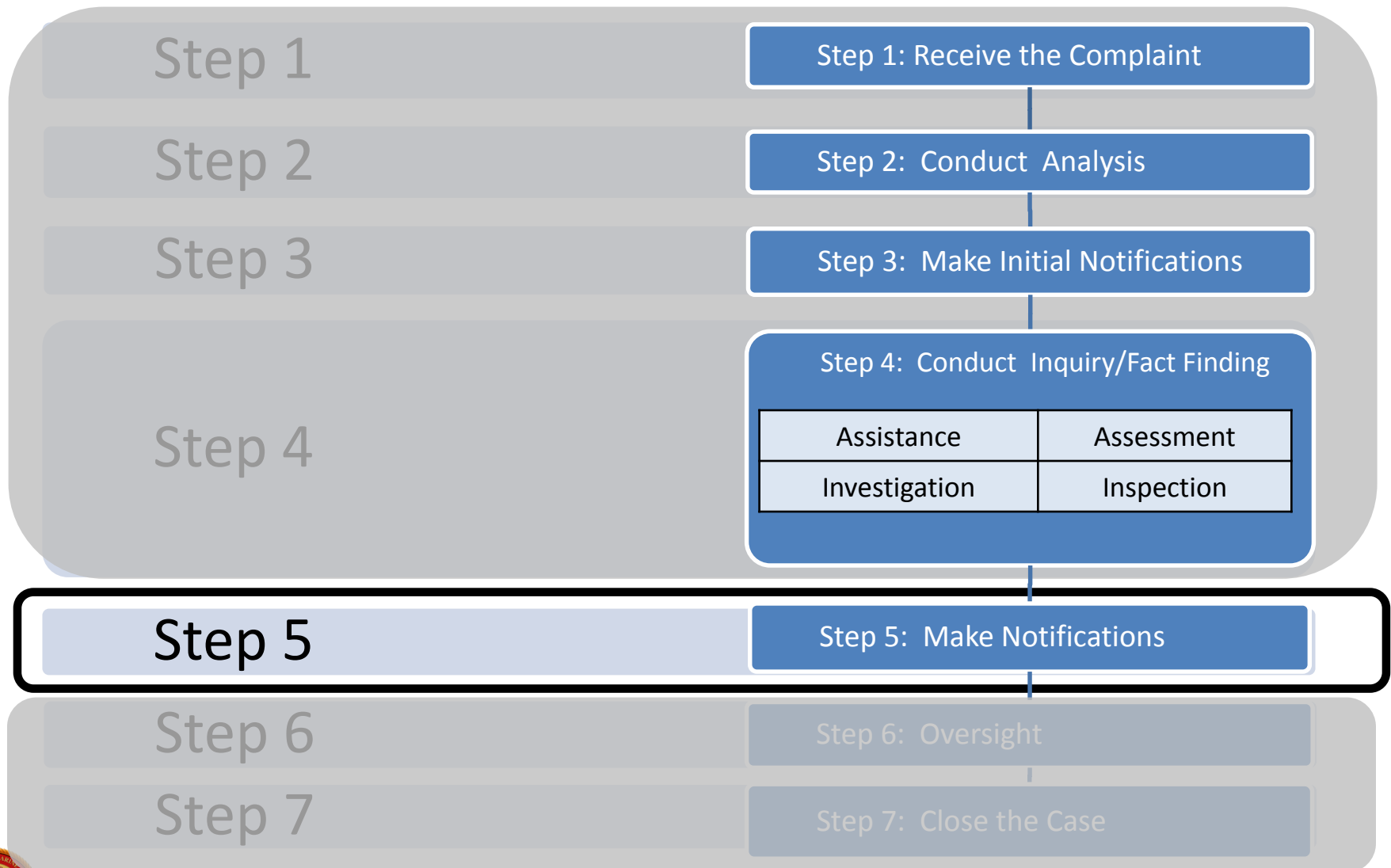
IG PROCESS – PART III

ENABLING LEARNING OBJECTIVES

1. Know case file retention requirements.



IG PROCESS –STEP FIVE– MAKE NOTIFICATIONS



STEP FIVE – MAKE NOTIFICATIONS OF RESULTS

- Provide **ONLY** information pertaining directly to that individual
- Be aware of the privacy of everyone involved and handle notifications in accordance with the Privacy Act
- All notifications will be recorded in the case tracking system and annotated in the case notes



COMMANDER/SUPERVISOR NOTIFICATION

- Formally notify any commanders or supervisors whom the investigator initially notified.
- Notify in writing the appropriate commanders or supervisors of the approved results of the Investigation and enclose a copy of the notification in the case file



SUBJECT NOTIFICATION

- Notify the Subject of the approved results of the Investigation in writing and enclose a copy of the notification in the case file
- If the Subject desires more information, he or she must request it under the provisions of the Freedom of Information Act
- Do not comment on actions that the command may contemplate
- Subjects must be entered into CMS, linked to their allegations



COMPLAINANT NOTIFICATION

- Must notify the complainant of the approved results (Substantiated/Not Substantiated) of the investigation in writing
- The approved investigation results are those issues and allegations directly pertaining to, or made by, the complainant
- Does not include specifics of any corrective action and is general in nature. Exception: For spousal support, tell them how much they should expect to receive.



CLOSURE LETTER

Closure Letters come from the Directing Authority only

DO include:

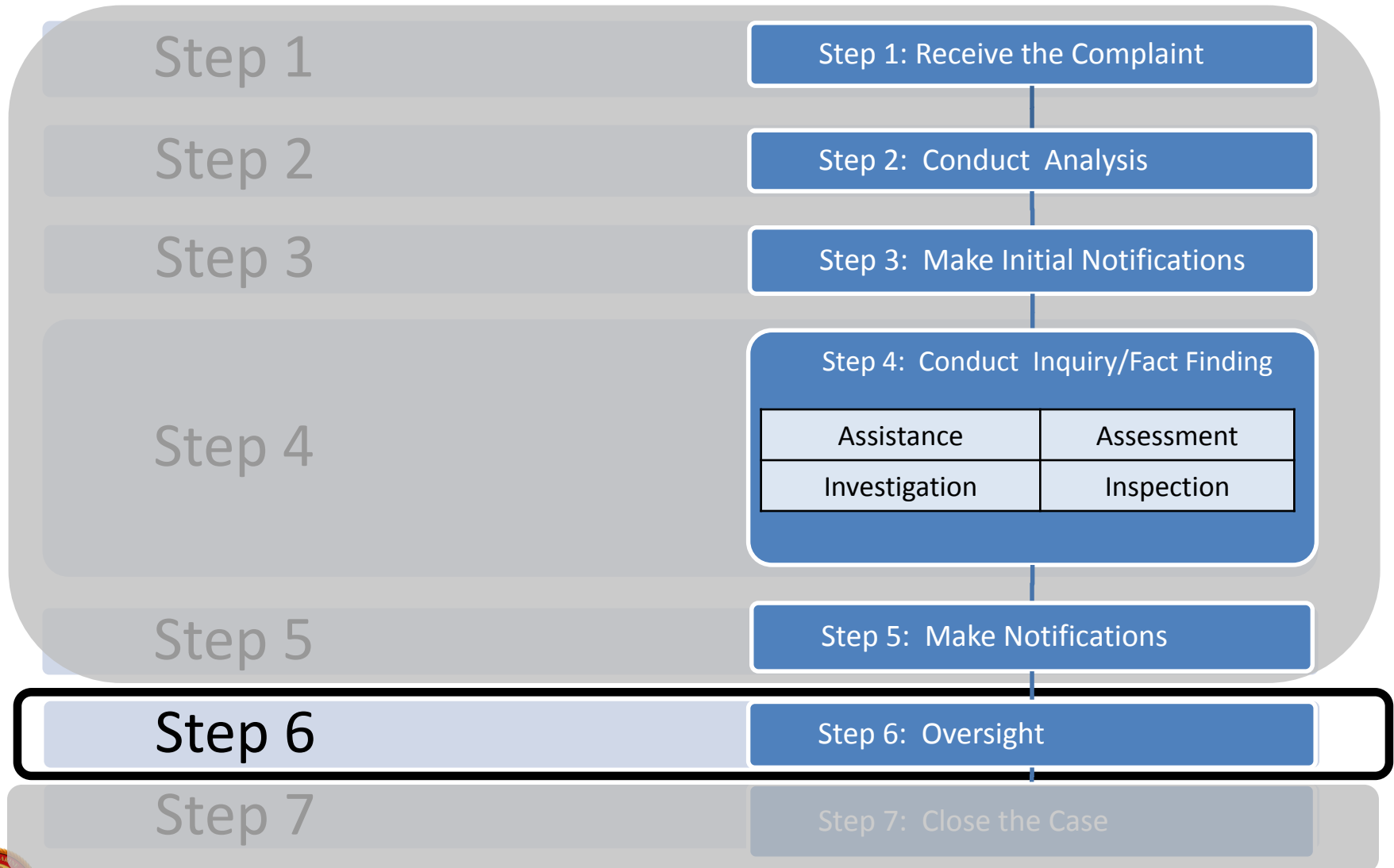
- A final reply to the complainant
- Established policies (if appropriate)
- That corrective action was taken
- Information only pertaining to the complainant...may request more through Freedom of Information Act (FOIA) Request

DO NOT include:

- Classified information
- Private information about third parties
- Unconfirmed or speculative information
- Opinions about Complainant
- The name of the Subject
- The type of corrective action taken



IG PROCESS –STEP SIX– OVERSIGHT



STEP SIX – CONDUCT OVERSIGHT

- Ensures that the Investigating Officers have fulfilled their responsibilities
- Ensures that corrective actions have occurred
- Do not close the case until problem is resolved or satisfied the complainant has received fair treatment
- If the problem is not resolved, determine the reason and document the facts or gaps in policy
- Do not direct that policy needs to change



IG PROCESS –STEP SIX– OVERSIGHT

Step 1

Step 1: Receive the Complaint

Step 2

Step 2: Conduct Analysis

Step 3

Step 3: Make Initial Notifications

Step 4

Step 4: Conduct Inquiry/Fact Finding

Assistance

Assessment

Investigation

Inspection

Step 5

Step 5: Make Notifications

Step 6

Step 6: Oversight

Step 7

Step 7: Close the Case



STEP SEVEN - CLOSE THE CASE

- Upon completion of all matters being thoroughly addressed, complete the following:
 - Close the case file with completed case notes (paper copy and electronic)
 - Note developing trends in reoccurring matters



STEP SEVEN - CLOSE THE CASE: CASE FILES

- Paper Copy
 - Remove sticky notes, miscellaneous irrelevant items...shred them
 - Maintain case manageability; possibility of FOIA Request
 - File case IAW relevant policies or publications
- Electronic Case Tracking System - CMS
 - Review fields for correct spelling pertinent for search criteria
 - Ensure all documents are attached; maintained IAW relevant policies or publications
- Complete Case Closure Checklist



CASE FILE DOCUMENTS

CMS

- Original Complaint (OC)
- Acknowledgement (ACK)
- Case Action/Tasking Letters
- Command Response
- Command Closure Letter (END_CMD)
- End Complainant (END_OC)

Investigations

- Hotline Completion Report (HCR)
- Command Endorsement
- Legal Sufficiency
- Enclosures (ONLY if requested)

Paper File

- Original Complaint (OC)
- Acknowledgement (ACK)
- Case Action/Tasking Letters
- Command Response
- Command Closure Letter (END_CMD)
- End Complainant (END_OC)

Investigations

- Hotline Completion Report (HCR)
- Command Endorsement
- Legal Sufficiency
- Enclosures



STEP SEVEN - CLOSE THE CASE

- Make Appropriate Reports
 - Prepare the appropriate reports based upon the local IG Standing Operating Procedures (SOP)
 - The reports may vary from command to command



STEP SEVEN - CLOSE THE CASE

- Analyze for Developing Trends
 - CIGs identify trends that affect the command and correct systemic issues
 - Items that should be considered:
 - Most frequent complaints
 - Most frequently substantiated allegations
 - Total number of complaints
 - Sources of complaints



RELEASE OF IG RECORDS

- IG Act and confidentiality (reasonable expectation, not a guarantee)
- PA and FOIA: redactions → Appropriately cited authority
critical FOIA implications
- Official request—relevance?
 - Articulate official purpose in release document
 - Adverse actions
- Release Authority
 - Directing Authority
 - Command that authored the requested document regardless of purpose



CASE FILE RETENTION TIMES

UPDATE: Per DoDI 7050.01

- All cases (Assistance & Investigation) opened on or after 17 Oct 17:
 - 2 years in local office, 8 more in government storage, then destroy
- Historical Significance
 - Permanent

In unique cases, consult legal to ensure compliance



QUESTIONS?

